

## **REMARKS**

Claims 1-8, 10-24, and 26-32 stand rejected and remain pending in the application. Claims 9 and 25 were canceled in a previous response. Claims 1 and 17 are amended herein. The Applicant respectfully traverses the rejections and requests allowance of the claims.

### **35 U.S.C. § 102 Rejections**

Claims 1 and 17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,136,583 (Oberg). The Applicant respectfully traverses the rejection in light of the following remarks.

Claims 1 and 17 have been amended herein, and the amendments are supported in the Specification at page 7, lines 12-14, and page 13, lines 7-9.

Independent claim 1 now recites, in part, a first POP and a second POP configured to coordinate with one another a timing of a switch-over from the first optical wavelength to the second optical wavelength in order to provide service continuity. Oberg fails to disclose this coordination and continuity between its nodes 11.

Rather, Oberg teaches that RETs 29.1-29.S are turned off in the case of a break of the WDM working fibre (Oberg, col. 5, lines 56-60). In fact, the RETs in Oberg remain turned off until some predetermined time period has elapsed or until a control signal is received from an administrative system (Oberg, col. 5, line 60 – col. 6 line 11). While the RETs are turned off, there will consequently be a break in the provided service. In contrast, claim 1 requires coordination between the first and second POPs to provide service continuity.

Therefore, Oberg does not teach all the limitations of claim 1 and the rejection of claim 1 should be withdrawn accordingly. Claim 17 contains limitations similar to claim 1 and should be allowed over the art of record for the same reasons as claim 1.

Claims 1, 11, 13, 15, 17, 27, 29, and 31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,174,096 B2 (Berthold). The Applicant respectfully traverses the rejection in light of the following remarks.

Similar to Oberg, Berthold teaches a protection delay after a deterioration in signal quality is detected (Berthold, col. 6, lines 15-17). Network elements 12 and 14 wait a predetermined time before the system begins operating on a backup path (Berthold, col. 6, lines 17-23 and Figure 7). Again, this wait would result in an interruption in the provided service. In

contrast, claim 1 requires coordination between the first and second POPs to provide service continuity.

Therefore Berthold does not teach all the limitations of claim 1 and the rejection of claim 1 should be withdrawn accordingly. Claim 17 contains limitations similar to claim 1 and should be allowed over the art of record for the same reasons as claim 1.

The remaining dependent claims, while separately allowable over the art of record, depend from otherwise allowable independent claims. Therefore, the 35 U.S.C. § 102 rejection of the dependent claims should also be withdrawn.

### **35 U.S.C. § 103 Rejections**

Claims 2, 3, 10, 18, 19, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold.

Regarding claims 2 and 18, the Examiner asserts that the claimed difference exists not as a result of an attempt by applicant to solve a problem but merely amounts to a selection of expedients known to an artisan of ordinary skill as design choices (OA, p. 3, item 5). The Applicant respectfully disagrees with this assertion.

Claim 2 recites, in part, the first POP configured to receive the first user communications from the first user system over the first optical wavelength. This limitation is not merely a design choice, but a necessary element to the communication system of claim 2. Using the same wavelength between the user and the first POP provides the advantage of one less wavelength conversion, and therefore, less noise is introduced into the signal. Thus, the limitation is necessary to the communication system of claim 2 and not merely a design choice.

Additionally, the Examiner states that the Berthold system is “capable of using any wavelength between user and transceivers 22 and 24” (OA, p. 3, item 5). Again, the Applicant respectfully disagrees with this statement. Nowhere does Berthold disclose that transceivers 22 and 24 are capable of using “any wavelength”.

Therefore, the 35 U.S.C. § 103 rejection of claim 2 should be withdrawn. Claim 18 contains limitations similar to claim 2 and should be allowed for the same reasons as claim 2.

The remaining dependent claims, while separately allowable over the art of record, depend from otherwise allowable independent claims. Therefore, the 35 U.S.C. § 103 rejection of the dependent claims should be withdrawn.

Claims 4, 5, 7, 8, 11, 20, 21, 23, 24, and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berthold in view of Oberg. A discussion of this rejection is obviated in view of the discussion above distinguishing Berthold and Oberg.

Claims 6 and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berthold in view of U.S. Patent No. 6,917,759 B2 (Boer). A discussion of this rejection is obviated in view of the discussion above distinguishing Berthold.

Claims 14, 16, 30, and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Berthold in view of U.S. Patent No. 6,122,082 (Fishman). A discussion of this rejection is obviated in view of the discussion above distinguishing Berthold.

### **CONCLUSION**

Based on the above remarks, the Applicant submits that the claims in their present form are allowable. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant thus respectfully requests allowance of the claims.

The Applicant hereby authorizes the Office to charge Deposit Account No. 21-0765 the appropriate fee under 37 C.F.R. § 1.17(e) for the Request for Continued Examination (37 C.F.R. § 1.114(a)). The Applicant believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

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